

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554

RECEIVED

SEP 30 2004

Federal Communications Commission
Office of Secretary

In the Matter of)
)
Amendment of Section 73.202(b))
Table of Allotments) MB Docket No. 04-299
FM Broadcast Stations) RM-10958
(Refugio, Sinton and Taft, Texas))

To: The Commission

JOINT COMMENTS

Amigo Radio, Ltd. ("Amigo")¹ and Pacific Broadcasting of Missouri, LLC ("Pacific")² (collectively, the "Joint Petitioners"), pursuant to Sections 1.401 and 1.420 of the Commission's Rules and by their counsel, hereby submit these Joint Comments in connection with the Notice of Proposed Rule Making in this proceeding ("NPRM").³ The NPRM proposes the following changes to Section 73.202(b): (1) reallocate Channel 279C1 from Sinton, Texas to Refugio, Texas and modify the community of license of station KOUL(FM) to operate on Channel 279C1 at Refugio; and (2) modify the operating condition of KTKY(FM) to permit the station to commence program test authority ("PTA") on Channel 293C2 in Taft, Texas when KOUL(FM) commences PTA in Refugio.

The NPRM proposal will serve the public interest. The proposed reallocation of Channel 279C1 to Refugio is mutually exclusive with the existing allotment of that channel at Sinton, and will provide the requisite coverage to Refugio. The proposal will result in a preferential arrangement of allotments consistent with the FM Allotment Priorities by providing Refugio

¹ Amigo is the licensee of KOUL(FM), Sinton, Texas.

² Pacific is the licensee of KTKY(FM), Taft, Texas.

³ See *In the Matter of Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations, (Refugio, Sinton, and Taft, Texas)*, MB Docket 04-299 (FM-10958) (rel. Aug. 12, 2004).

No. of Copies rec'd
List ABCDE

014

with a first operating local station and enabling commencement of operation of a previously authorized first local service in Taft, without depriving Sinton of its sole local transmission service.⁴ Additional public interest factors in favor of relocating Channel 279C1 from Sinton to Refugio include the following: (1) Refugio has fewer operating local services than Sinton; (2) the reallocation will not result in the creation of any underserved land areas; and (3) the reallocation will not result in relocation of KOUL(FM) to an urbanized area.

The public interest is also served by modifying the condition for when KTKY(FM) may commence operation in Taft to state that KTKY(FM) may initiate program test authority (“PTA”) in Taft when KOUL(FM) commences PTA in Refugio, instead of after activation of either of the two vacant FM Allotments in Refugio.⁵ The modification will permit KTKY(FM) to provide Taft with its first local service significantly sooner, thereby serving the public interest.⁶ The Joint Petitioners, as the licensee of KTKY(FM) and KOUL(FM), have control over when these stations may initiate PTA in Taft and Refugio, respectively. The Joint Petitioners have a written agreement to complete construction and commence operation of the new facilities for KTKY(FM) and KOUL(FM) in an expeditious manner upon the FCC issuing KOUL(FM) a construction permit to change the station’s community of license to Refugio. If the FCC adopts the proposal in the NPRM, Taft could finally receive its first local service within the next several months. The alternative is waiting perhaps as long as another three years or more for the successful bidder for the vacant Refugio allotment to commence operation with the new facilities. This continued delay does not serve the public interest.

⁴ See *Revision of FM Assignment Policies and Procedures (“FM Allotment Priorities”)*, 90 FCC 2d 88 (1982), *recon denied*, 56 RR 2d 448 (1983).


⁵ Channel 263A, one of the two vacant FM Allotments in Refugio, will be auctioned in Auction 37.

⁶ The FCC approval for KTKY commencing PTA in Taft presently is dependent upon activation of one of the two vacant FM Allotments allocated to Refugio. This requirement has rendered it impossible for KTKY(FM) to render a first local service to Taft for several years because of events beyond Pacific’s control. The Commission has repeatedly denied Pacific’s requests to lift the condition and permit KTKY(FM) to commence PTA prior to activation of one of the two vacant FM Allotments.

WHEREFORE, FOR THE FOREGOING REASONS, Amigo Radio, Ltd. and Pacific Broadcasting of Missouri, LLC respectfully request that the Commission issue an Order in the instant proceeding granting the NPRM, modify Section 73.202(b) of the Commission's Rules accordingly, and modify the condition for when KTKY(FM) may commence program test authority in Taft, Texas. Should the Commission implement the proposed changes to the FM Table of Allotments, the Joint Petitioners reaffirm that they will timely file the necessary applications for construction permit and construct the facilities for each station.⁷

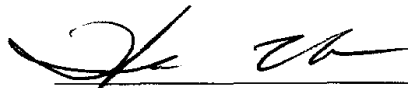
Respectfully submitted,

AMIGO RADIO, LTD.


Robert B. Jacobi
Cohn & Marks
1920 N Street, NW
Suite 300
Washington, DC 20036
(202) 452-4810

Its Counsel

PACIFIC BROADCASTING OF MISSOURI, LLC


Pamela C. Cooper
Davis, Wright Tremaine, LLP
1500 K Street, NW
Suite 450
Washington, DC 20005
(202) 508-6613

September 30, 2004

Its Counsel

⁷ Since KTKY(FM) already has an outstanding construction permit to commence operations in Taft, Texas, only Amigo Radio will be required to file an application for construction permit to change KOUL's community of license to Refugio.

Certificate of Service

I, Jane L. Hall, a secretary in the law firm of Davis, Wright Tremain, LLP, do hereby certify that on this 30th day of September, 2004, I caused copies of the foregoing "Joint Comments" to be hand delivered, addressed to the following persons:

John A. Karousos
Assistant Chief, Audio Division
Media Bureau
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Victoria McCauley
Federal Communications Commission
Media Bureau
445 12th Street, SW
Washington, DC 20554

Jane L. Hall